THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

Reportable
Case No 237/04

In the matter between:

CORDIANT TRADING CC **Appellant**

and

DAIMLER CHRYSLER FINANCIAL SERVICES (debis) (PTY) LTD **Respondent**

Coram: HOWIE P, ZULMAN, MTHIYANE, JAFTA AND MLAMBO JJA
Heard: 9 MAY 2005
Delivered: 30 MAY 2005

Summary: Jurisdiction – on causes – limited to causes arising within the court's area of jurisdiction. Declaration of rights – when competent under s 19(1)(a)(iii) of Act 59 of 1959

J U D G M E N T

JAFTA JA/

JAFTA JA:

[1] Two issues were raised in this appeal: the first is whether the Durban and Coast Local Division had jurisdiction to hear and determine an

application brought against a South African company based beyond its area of jurisdiction; and the second is whether a seller of goods which were resold to third parties in successive sales has *locus standi* to seek a declarator against the original vendor who had sold them to the person from whom the applicant had purchased the goods.

[2] In June 2000 the appellant brought an application in the court *a quo* for an interdict restraining the respondent from vindicating certain motor vehicles pending the finalisation of an action it intended to institute. The appellant indicated that it would seek an order declaring that the respondent had no right to vindicate the vehicles in question. By agreement between the parties the application was referred for the hearing of oral evidence on certain defined issues. The parties further agreed that the appellant would seek the declarator on the same papers instead of instituting a new action. Since the respondent had objected to both the jurisdiction of the court and the appellant's *locus standi*, the court *a quo* (Nicholson J) was asked to decide these issues separately from the merits of the matter. The learned Judge upheld both points and dismissed the application with costs. The appellant now appeals against that order with leave of this Court.

[3] The appellant is a close corporation dealing in motor vehicles and sells them mainly to other dealers. It has its principal place of business in Durban. The respondent is a registered company with its principal place of

business at 123 Wierda Road, Centurion, Gauteng. The respondent also is a trader in certain brands of motor vehicles. It purchases its stock from the manufacturers and sells only to accredited dealers.

[4] During July 1997 the respondent and a company called Maxine Motor Holdings (Pty) Limited trading as Fourways Motors ('Fourways Motors') concluded a written sale agreement in terms of which the respondent sold new vehicles to Fourways Motors. It was a term of the agreement that ownership of the sold vehicles would remain vested in the respondent until the full purchase price had been paid. The vehicles forming the subject matter of the present proceedings were sold by the respondent to Fourways Motors in terms of that agreement. Sixteen of those vehicles were further sold to the appellant by Fourways Motors. The appellant resold them to other dealers who, in turn, resold the vehicles to members of the public.

[5] In June 2000 the respondent issued a notice to the effect that Fourways Motors had failed to pay for some of the vehicles and that ownership thereof remained with it. As a result the respondent demanded payment for the vehicles or their return from persons in whose possession they were at the time of the notice. This prompted the appellant to launch the current proceedings on the basis that it is likely to face claims from its purchasers for repayment of the amounts paid to it for the vehicles.

Meanwhile Fourways Motors was placed under liquidation after its managing director had died under mysterious circumstances. He had represented Fourways Motors at the conclusion of the sales of the vehicles to the appellant.

[6] Regarding the issue of jurisdiction, the court *a quo* ruled that it had jurisdiction only in respect of two vehicles which were found to be in its territorial area of jurisdiction at the time the proceedings were launched. In this regard Nicholson J said:

‘I am therefore of the view that because it was common cause that the respondent did not reside in this Court’s jurisdiction that all the requirements for an interdict, including a clear right, apprehension of harm and no alternative remedy, arose outside the geographical area of this Court, it consequently had no jurisdiction to deal with all the vehicles save vehicles numbers 5 and 14 in this application. For this additional reason the application falls to be dismissed with respect to all the other vehicles.’

[7] As to the issue of *locus standi*, the learned Judge followed, amongst others, the decisions of this Court in *Lammers & Lammers v Giovannoni* 1955 (3) SA 385 (A) and *Louis Botha Motors v James & Slabbert Motors (Pty) Ltd* 1983 (3) SA 793 (A), in which it was held that a seller’s liability to his purchaser depends upon proof of a breach of the warranty against eviction and that this warranty binds a seller only to the purchaser to whom he had sold. On the basis of this principle, the learned Judge held that since

the threat of eviction was not directed at the appellant's purchasers, it had no *locus standi* to restrain the respondent from vindicating the vehicles.

[8] Before us, counsel for the appellant submitted that the court *a quo* had jurisdiction because the cause arose within its area of jurisdiction. He mentioned various factors which he contended establish jurisdiction. Alternatively, he submitted that since the court *a quo* had found it had jurisdiction in respect of two of the vehicles in question, considerations of convenience and common sense warranted that it should have jurisdiction in respect of all the vehicles. This, he argued, would prevent the proliferation of proceedings. Reliance was placed on *Estate Agents Board v Lek* 1979 (3) SA 1048 (A) at 1067 where Trollip JA said:

'Now I have already pointed out that the relief against such adverse effect of the Board's decision which respondent was entitled to and did seek by way of an appeal under the Act was not mandatory but rather declaratory or empowering in respect of the Board. Having due regard to that fact I think that the Court *a quo* had jurisdiction to entertain his appeal simply on the ground that he was resident within its area of jurisdiction. After all, that was the Court immediately at hand and easily accessible to him and to which he would naturally turn for aid in seeking to have the diminution in his legal capacity or personality remedied. In the present context of our unitary judicial system of having one Supreme Court with different Divisions, as set out earlier in this judgment, convenience and common sense, are, *inter alia,* valid considerations in determining whether a particular Division has jurisdiction to hear and determine the particular cause.'

[9] Regarding the main argument, counsel for the respondent submitted that the factors referred to by the appellant were insufficient to justify the conclusion that the cause indeed arose within its area of jurisdiction. As to the alternative argument, he submitted that the present matter is distinguishable from *Lek* where the appellant's right to carry on business as an estate agent was affected within the area of jurisdiction of the court of first instance and that, he argued, is not the position in the present case.

[10] The limitation as to the territorial area of each High Court is imposed by s 19(1)(a) of the Supreme Court Act 59 of 1959 ('the Act'). The section provides that such court shall have jurisdiction over persons residing in and causes arising within its area of jurisdiction. For present purposes the jurisdiction of the court *a quo* must be determined with regard to the requirement of 'causes arising'. In the past, these words were construed to mean proceedings over which a High Court has jurisdiction under the common law (*Bisonboard Ltd v K Braun Woodworking Machinery (Pty) Ltd* 1991 (1) SA 482 (A) at 486 and *Ewing McDonald & Co Ltd v M & M Products Co* 1991 (1) SA 252 (A)). In the latter case Nienaber AJA said at 257F-G:

'The expression "causes arising" has been interpreted in the *Bisonboard* judgment *supra* at p 11 of the typescript copy "… as signifying not "causes of action arising" but "legal proceedings duly arising", that is to say, proceedings in which the Court has jurisdiction

under common law". Since a Court under the common law would have had jurisdiction over persons domiciled within its area of jurisdiction (who would include, although not confined to persons "residing or being in"), "persons residing or being in" and "causes arising" are not antithetical concepts; the former is merely an elaboration of the latter.'

[11] Plainly, what is meant in the above interpretation is that 'causes arising' does not refer to causes of action but to all factors giving rise to jurisdiction under the common law. Of course, such factors do not exclude a cause of action. It is by now well-established that, in appropriate cases, a court which has jurisdiction over the area within which a cause of action arose is competent to decide a matter on that basis alone.

[12] Against this background I turn to the issue of whether the appellant had adequately established that the court *a quo* had jurisdiction under the common law. The sales between the appellant and the immediate purchasers were concluded in Durban. The appellant's obligation under the warranty against eviction flows from these sales. Some of the evictions against the possession of the vehicles in question occurred in Durban. In my view, these facts show a sufficient connection to the court *a quo's* area of jurisdiction so as to justify its competence under the common law to decide the case .

[13] In addition, some of the vehicles which formed the subject matter of these proceedings were found within the court *a quo's* area of jurisdiction.

As a result it held that it had jurisdiction in respect thereof. In order to avoid a proliferation of applications, it would have been convenient for the court *a quo* to deal with all the vehicles involved instead of confining itself to only those found within its area of jurisdiction. Indeed the balance of convenience has been regarded as a consideration in determining whether or not a court has jurisdiction. In *Sonia (Pty) Ltd v Wheeler* 1958 (1) 555 (A) Price AJA said at 562F-G:

'It is argued that if the money claims stood alone and there were no claim for cancellation, the Court would not have jurisdiction. Assuming this to be so, assuming that the Eastern Districts Court could not entertain a claim for a refund of the purchase price if that claim stood alone, it nevertheless seems to me that every consideration of convenience and common sense indicates that where such a money claim is as closely associated with a claim for cancellation of the contract, as in this case, and is a consequential claim, following on the cancellation, the same Court which has jurisdiction to decree cancellation should have jurisdiction to hear the money claim for a refund of the purchase price, and to order costs.'

See also *Roberts Construction Co Ltd v Willcox Bros (Pty) Ltd* 1962 (4) SA 326 (A).

[14] The primary object of the above approach is to avoid an unnecessary proliferation of proceedings and the possibility of conflicting decisions on the same cause of action, between the same parties. In the present case the issues before the court *a quo* involved the same parties. The underlying basis

for the appellant's case was its obligation under the warranty against eviction in respect of each vehicle. All vehicles were originally sold by the respondent to Fourways Motors which, in turn, resold them to the appellant. The respondent contended that ownership in respect of all the vehicles did not pass to the appellant and its successors in title because of the reservation of ownership clause in the agreement between it and Fourways Motors which remained in force due to the latter's failure to pay the purchase price. The strong consideration of convenience in this case impels me to the conclusion that the court *a quo* had jurisdiction to entertain the application in respect of all the vehicles.

[15] The next question relates to the appellant's *locus standi* to seek a declarator. The answer thereto depends mainly on the interpretation of s 19(1)(a)(iii) of the Act. Subsection (1) insofar as is relevant provides:

'(1)(a) A provincial or local division shall have jurisdiction over all persons residing or being in and in relation to all causes arising and all offences triable within its area of jurisdiction and all other matters of which it may according to law take cognizance, and shall, subject to the provisions of subsection (2), in addition to any powers or jurisdiction which may be vested in it by law, have power ─

(i) …

(iii) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.'

[16] Although the existence of a dispute between the parties is not a prerequisite for the exercise of the power conferred upon the High Court by the subsection, at least there must be interested parties on whom the declaratory order would be binding. The applicant in a case such as the present must satisfy the court that he/she is a person interested in an 'existing, future or contingent right or obligation' and nothing more is required (*Shoba v Officer Commanding, Temporary Police Camp, Wagendrif Dam* 1995 (4) SA 1 (A) at 14F). In *Durban City Council v Association of Building Societies* 1942 AD 27 Watermeyer JA with reference to a section worded in identical terms said at 32:

> 'The question whether or not an order should be made under this section has to be examined in two stages. First the Court must be satisfied that the applicant is a person interested in an "existing, future or contingent right or obligation", and then, if satisfied on that point, the Court must decide whether the case is a proper one for the exercise of the discretion conferred on it.'

[17] It seems to me that once the applicant has satisfied the court that he/she is interested in an 'existing, future or contingent right or obligation', the court is obliged by the subsection to exercise its discretion. This does not, however, mean that the court is bound to grant a declarator but that it must consider and decide whether it should refuse or grant the order, following an examination of all relevant factors. In my view, the statement

in the above dictum, to the effect that once satisfied that the applicant is an interested person, 'the Court must decide whether the case is a proper one for the exercise of the discretion' should be read in its proper context. Watermeyer JA could not have meant that in spite of the applicant establishing, to the satisfaction of the court, the prerequisite factors for the exercise of the discretion the court could still be required to determine whether it was competent to exercise it. What the learned Judge meant is further clarified by the opening words in the dictum which indicate clearly that the enquiry was directed at determining whether to grant a declaratory order or not, something which would constitute the exercise of a discretion as envisaged in the subsection (cf *Reinecke v Incorporated General Insurances Ltd* 1974 (2) SA 84 (A) at 93A-E).

[18] Put differently, the two-stage approach under the subsection consists of the following. During the first leg of the enquiry the court must be satisfied that the applicant has an interest in an 'existing, future or contingent right or obligation'. At this stage the focus is only upon establishing that the necessary conditions precedent for the exercise of the court's discretion exist. If the court is satisfied that the existence of such conditions has been proved, it has to exercise the discretion by deciding either to refuse or grant the order sought. The consideration of whether or not to grant the order constitutes the second leg of the enquiry.

[19] The appellant, in the present case, was clearly interested in the determination of the respondent's alleged right of ownership on the vehicles in question because its right to seek compensation and liability under the warranty against eviction depended on the respondent's right of ownership being unassailable. Consistently with this position, the issues which the appellant wanted to raise were: (a) that the respondent was not the owner of the vehicles in question and that Fourways Motors was; (b) that the respondent was in any event estopped from denying Fourways Motors' ownership. The appellant could obviously raise those issues in any of the proceedings instituted by the respondent. Indeed the respondent's counsel conceded that the appellant could intervene in any of such proceedings. However, counsel argued that instead of launching the present proceedings, the appellant should have waited for its buyers first to institute proceedings against it. I do not agree. It is clear from what is said above including the concession by the respondent's counsel that the appellant had interest in the current proceedings. I can conceive of no basis on which such interest could be suspended until the appellant's buyers institute proceedings against it. Section 19(1)(a)(iii) certainly does not require that as a preliminary step. It follows that the court *a quo* erred in holding that the appellant had no *locus standi*.

[20] In the view I take of the matter, it is not necessary to determine whether the common law principle, confining claims for compensation arising from the warranty against eviction to immediate sellers and purchasers, is applicable to the present case. Suffice to say that its application would not, in my view, affect the interest of the appellant in these proceedings. If it applies, it would only mean that the appellant's liability is confined to its immediate purchasers.

[21] In the circumstances the court *a quo* should have dismissed the points raised by the respondent and proceeded to a consideration of the merits, thereby exercising its discretion as contemplated in s 19(1)(a)(iii).

[22] The following order is made:

1. The appeal is upheld with costs including costs occasioned by the employment of two counsel.

2. The order of the court *a quo* is set aside and replaced with the following order:

'The points raised by the respondent in respect of jurisdiction and *locus standi* are hereby dismissed with costs including costs of two counsel.'

C N JAFTA
JUDGE OF APPEAL

Concur:

HOWIE P
ZULMAN JA
MTHIYANE JA
MLAMBO JA